

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UQUINN BANKS,

Plaintiff,

-against-

EDWARD J. MCLAUGHLIN, JUDGE;
DISTRICT ATTORNEY'S OFFICE; LUCY
LANG, ASSISTANT DISTRICT ATTORNEY;
DOWNSTATE CORRECTIONAL FACILITY;
COMSTOCK CORRECTIONAL FACILITY;
COXSACKIE CORRECTIONAL FACILITY;
ROBERT BRIERE, ATTORNEY; EUGENE
NATHANSON; ATTORNEY; DENNIS J.
DOODY, APPELLATE ATTORNEY;
COMMISSIONER DOCCS; NYCPD 25,

Defendants.

1:19-CV-4127 (CM)

ORDER

COLLEEN MCMAHON, Chief United States District Judge:

By order dated November 21, 2019, the Court dismissed this action pursuant to 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). The Court entered judgment on November 22, 2019.

On December 26, 2019, the Court received Plaintiff's motion for an extension of time to appeal the order of dismissal. (ECF 55.) Plaintiff did not, however, file a notice of appeal. For the following reasons, Plaintiff's motion for an extension of time to appeal is granted.

DISCUSSION

Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure requires a notice of appeal in a civil case to be filed within thirty days of entry of judgment. *See* Fed. R. App. P. 4(a)(1)(A). The district court may extend the time to file a notice of appeal, however, if the motion is filed within thirty days of the expiration of the time to file notice of appeal, and if the moving party shows excusable neglect or good cause for untimely filing. *See* Fed. R. App. P. 4(a)(5)(A).

Plaintiff signed the motion for an extension of time to appeal on December 18, 2019, and it therefore appears that under the prisoner mailbox rule, the motion was filed within thirty days from the entry of judgment. Plaintiff states that he seeks an extension because he “is working on getting together the filing fees” for an appeal.¹ (ECF No. 55). The Court grants Plaintiff’s motion for an extension of time.

An appeal cannot proceed, however, unless Plaintiff files a notice of appeal that “designate[s] the judgment, order, or part thereof being appealed.” Fed. R. App. P. 3(c)(1)(B); *The New Phone Co. v. City of New York*, 498 F.3d 127, 131 (2d Cir. 2007) (holding that appellate jurisdiction “depends on whether the intent to appeal from [a] decision is clear on the face of, or can be inferred from, the notice[] of appeal”). Should Plaintiff wish to pursue his appeal rights, he must file a notice of appeal within thirty days of the date of this order.²

CONCLUSION

The Court grants Plaintiff’s motion for an extension of time to appeal (ECF No. 55). If Plaintiff wishes to pursue and appeal, he must file a notice of appeal within thirty days of the date of this order. A notice of appeal form is attached to this order. The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket.

¹ This Court denied Plaintiff’s request to proceed IFP on appeal, concluding that an appeal from the order of dismissal would not be taken in good faith. (ECF No. 53). But if, as Plaintiff states, he is unable to afford the cost of suit, he can seek leave from the Court of Appeals to proceed IFP on appeal. A prisoner who is granted leave to proceed IFP can pursue an appeal without prepaying the full filing fee at the time of initiating the appeal. *See* 28 U.S.C. § 1915(b).

² Throughout this litigation, Plaintiff has filed dozens of letters and other documents. Plaintiff failed, however, to file an amended complaint as directed. The Court therefore cautions Plaintiff that only the filing of document that is recognizable as a notice of appeal will trigger an appeal. A notice of appeal form for Plaintiff to complete and mail to the Court if he wishes to pursue an appeal of the order of dismissal is attached to this order.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: May 14, 2020
New York, New York

A handwritten signature in black ink, appearing to read "Colleen McMahon", is written over a horizontal line.

COLLEEN McMAHON
Chief United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(List the full name(s) of the plaintiff(s)/petitioner(s).)

____CV____ () ()

-against-

NOTICE OF APPEAL

(List the full name(s) of the defendant(s)/respondent(s).)

Notice is hereby given that the following parties: _____

(list the names of all parties who are filing an appeal)

in the above-named case appeal to the United States Court of Appeals for the Second Circuit

from the ☐ judgment ☐ order entered on: _____
(date that judgment or order was entered on docket)

that: _____

(If the appeal is from an order, provide a brief description above of the decision in the order.)

Dated _____

Signature* _____

Name (Last, First, MI) _____

Address _____

City _____

State _____

Zip Code _____

Telephone Number _____

E-mail Address (if available) _____

* Each party filing the appeal must date and sign the Notice of Appeal and provide his or her mailing address and telephone number, EXCEPT that a signer of a pro se notice of appeal may sign for his or her spouse and minor children if they are parties to the case. Fed. R. App. P. 3(c)(2). Attach additional sheets of paper as necessary.